IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 33474 of 2007(I)

EP 54/2004 in OS.1691/2001 of PRL.MUNSIFF COURT,THRISSUR

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PETITIONER:

C.M.VASU, S/O C.P.MADHAVAN,
CHANENGATTIL, PERAMANGALAM VILLAGE AND DESOM,
THRISSUR TALUK.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENT:

THE CATHOLIC SYRIAN BANK LTD.,
AVANOOR BRANCH, THRISSUR DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.33474 of 2007

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Dated this the 14th day of November, 2007.

JUDGMENT

This Writ Petition is filed against the order of the Principal Munsiff, Thrissur in E.P.No.54 of 2004 in O.S.No.1691 of 2001. The petition is filed to arrest the judgment debtors and the court below found that the warrant is to be issued against the first judgment debtor. I have gone through the order passed by the learned Munsiff. It is submitted that the first judgment debtor is running a tea shop. He would submit that he is now working in the shop conducted by his brother-in-law. It is further contended that he is having a house. He would also submit that the house belongs to his wife.

2. The court below acted on the mere oral assertion. No document was produced to satisfy the conscience of the court regarding the conduct of the tea shop nor the ownership of the house. Without proving conclusively these factors by producing documents it was not correct on the part of the court to rely on the oral evidence of PW1, especially when it was denied by RW1. Under Section 51 of C.P.C. prima facie burden is on the decree holder to prove the means of the judgment debtor and the mere ipse dixit of the decree holder is not sufficient to discharge that

burden.

3. Therefore, the order under challenge suffers from serious infirmities and it is set aside and the matter is remitted back to the court below for fresh disposal after affording an opportunity to both sides to adduce further evidence in support of their respective contentions. Since I am disposing of the matter at the admission stage itself, the court below shall fix a date of appearance for the decree holder and then proceed to dispose of the matter in accordance with law. The first judgment debtor is directed to appear before the court below on 5.12.2007. Till a final disposal of the matter, the execution of the warrant is to be deferred.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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